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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1932

No. 395

C. A. BRADLEY, DOING BUSINESS AS WOLVERINE MOTOR FREIGHT LINES, APPELLANT,

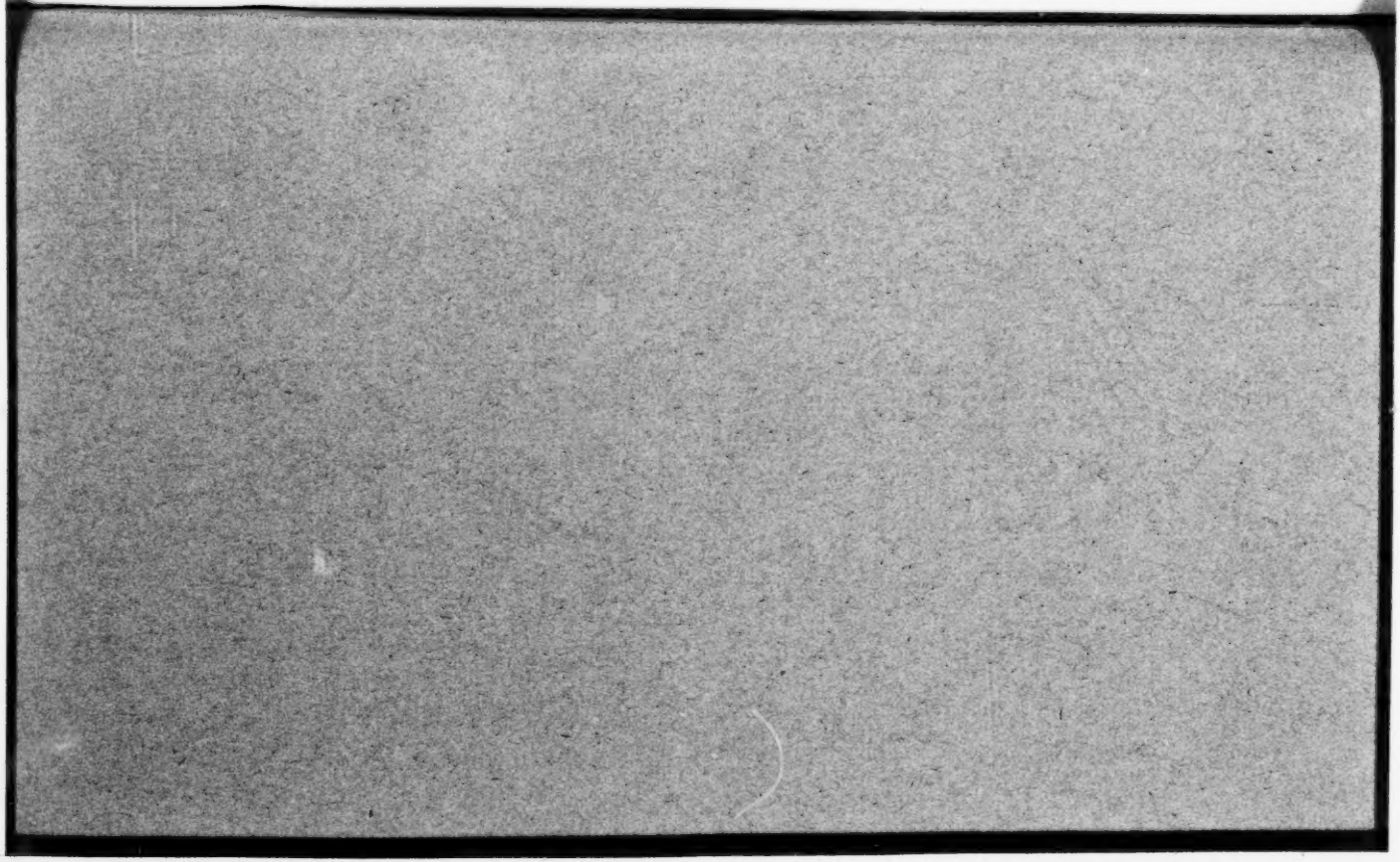
vs.

THE PUBLIC UTILITIES COMMISSION OF OHIO

APPEAL FROM THE SUPREME COURT OF THE STATE OF OHIO

FILED SEPTEMBER 24, 1932

(37,092)



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[fol. 1] Clerk's certificate of transmittal omitted in printing.

[fol. 2] [File endorsement omitted]

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

Application No. 5154

In re Application of C. A. Bradley, d. b. a. Wolverine Motor Freight Lines, Flint, Michigan, for an Interstate Regular Certificate Authorizing the Transportation of Property Between Cleveland, Ohio, and the Ohio-Michigan State Line Over U. S. Route 20, Final Destination, Flint, Michigan

Docket Entries

12/14/31. Filed application for Certificate to operate 1 2½-ton truck drawn by 1 2½-ton Semi and 1 2½-ton truck drawn by 1 1½-ton semi- over route extending between Cleveland, Ohio, and Ohio-Michigan State Line via State Route 20 with final destination Flint, Michigan. Financial Statement. Assigned for hearing Friday, Jan. 15, 1931, 10:00 A. M.

12/24/31. Filed Protest of Lake Shore Electric Company. Reassigned for Wednesday, January 20, 1932, 10:00 A. M.

1/19/32. Filed Protest Pennsylvania Railroad Company. Assigned for hearing Wednesday, Feb. 17, 1932, 10:00 A. M.

1/20/32. Heard. Continued to 2/17/32, 10:00 A. M.

2/ 4/32. Filed transcript Proceedings and Testimony, 2 pages of hearing 1/20/31.

2/17/32. Heard. Exhibits filed: A—Map (attached to application); B—check of traffic; Protestants: 1—Check of Traffic U. S. Route 20.

2/26/32. Filed transcript Proceedings and Testimony, 21 pages.

3/ 8/32. Order denying application on account of badly congested condition of highway, exceptions made and noted.
3/28/32. Filed Application C. A. Bradley for Rehearing.
3/30/32. Denied, exceptions made and noted.
4/18/32. Error Proceedings filed in Supreme Court.
5/ 9/32. Entry transmitting papers to the Clerk of the Supreme Court.

The Public Utilities Commission of Ohio. E. H. Hopple, Chairman; Frank W. Geiger, John W. Bricker, Commissioners. Ira E. Sprankle, Superintendent of Investigation.

Dated at Columbus, Ohio, this ninth day of May, A. D. 1932.

[fol. 3] Certificate of transmittal omitted in printing.

[fol. 4] (Form of Application for Certificate of Public Convenience and Necessity or Extension of Route Thereunder)

(Secs. 614-90-91-93 G. C.)

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

No. 5154

In the Matter of C. A. BRADLEY, d. b. as Wolverine Motor Freight Lines, a Motor Transportation Company

Application for Interstate Regular Certificate of Public Convenience and Necessity

The applicant respectfully shows:

1. That he is an (Here state whether corporation, partnership, individual, etc.) individual, 23536, and is a motor transportation company having his office or principal place of business at (Street Address) No. 4502 Industrial Ave., (City or Town) Flint, Michigan.

2. That he desires a certificate of public convenience and necessity to operate motor vehicles for the transportation of (Persons or property, or both) property as a common carrier for hire upon and over the route as hereinafter described, using the following described motor vehicles and other physical property:

State license number	Year and trade name of motor vehicle	Motor number	Trailer	Seating capacity	Tonnage capacity
.....	G. M. C.....	2,404,540	.....	.....	2½
.....	6-ton Fruehauf Semi Acme	11,624	Drawn	By 2½	2½
.....	3-ton Fruehauf Semi.....	19,209	A, Drawn	By 1½	...

NOTE.—If not sufficient space attach additional sheets.

3. That he desires to operate between fixed termini or over a regular route extending between Cleveland, Ohio, and Ohio-Michigan State Line via State Route No. 20, with final destination Flint, Michigan, such complete route or extension of route being shown on the Map and being particularly described as to the public highways and streets over which the same extends in the Description of Route, both of which are hereto attached and made a part hereof, such route or extension of route extending over a distance of — miles distributed among the counties and municipalities in accordance with the Mileage Distribution Sheet hereto attached and made a part hereof, showing the miles of such route within the corporate limits of each municipality and the miles of such route in each county exclusive of the portion within municipalities.

4. That — desire- to operate on call of the public over an irregular route or extension thereof to and from ——, Ohio, extending over all passable highways within the State of Ohio as shown on the Map hereto attached and made a part hereof.

*If proposing to operate between fixed termini or over a regular route, give names and addresses of all motor transportation companies, street railroads, interurban railroads and steam railroads operating in the territory through which you propose to operate. See list attached.

5. The following is applicant's proposed schedule—or time card (must be filled in): None required.

---

*This information is important and must be given.

NOTE.—If not sufficient space, attach schedule or time card. (Must be filled in.)

6. The following is the proposed tariff of passenger and (or) freight rates to be charged by applicant: None required.

NOTE.—If not sufficient space, attach tariff sheet.

7. Attached hereto and made a part hereof as Exhibit A is a map showing all highways and public places upon and over which your applicant is to operate. There is also filed herewith a copy of applicant's copartnership or association agreement.

8. Wherefore applicant prays that, unless a hearing is deemed unnecessary, the Commission fix a time for hearing this application, and that a certificate of public convenience and necessity may be granted applicant to operate as a motor transportation company upon and over the route described in (Strike out as the case may be) Par. 3, and Par. 4, hereof and for all proper orders in the premises.

Wolverine Motor Freight Line, R. G. Burdette, Manager, Applicant. —— ——, Attorney for Applicant. Address: ——.

Verification

STATE OF OHIO,
Franklin County, ss:

R. G. Burdette, being first duly sworn, says that he is the duly appointed, qualified, and acting manager for C. A. Bradley, the applicant named herein, and that the facts stated in the foregoing application are true as he verily believes.

R. G. Burdette, Manager.

Subscribed and sworn to before me this 14 day of December, 1931. C. M. Carmichael, Notary Public. (Seal.)

(Here follows map, side folio 5.)

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

EXHIBIT A

[fol. 6] Description of Route

Route U. S. No. 25 between its intersection with the Ohio-Michigan State Line and the city limits of Toledo, Ohio; thence via various streets in the City of Toledo and following State Route No. 102 thru Vickers and Elmore *the* its intersection with U. S. Route No. 20; thence via State Route No. 20 thru Fremont, Clyde, Bellvue, Monroeville, Norwalk, Wakeman, Oberlin, Elyria and thence to the corporation line of Cleveland; thence over various streets in the City of Cleveland to the company's terminal. Return over same route.

Mileage Distribution

Cleveland (within corporate limits)	6.9
Lakewood (within corporate limits)	3.3
Rocky River (within corporate limits)	2.3
Dover Village (within corporate limits)	5.1
Elyria (within corporate limits)	3.7
Oberlin (within corporate limits)	1.8
Lorain County (exclusive corporate limits)	20.7
Wakeman (within corporate limits)	.7
Norwalk (within corporate limits)	2.7
Monroeville (within corporate limits)	1.7
Bellvue (within corporate limits)	1.8
Huron County (exclusive corporate limits)	21.2
Clyde (within corporate limits)	1.4
Fremont (within corporate limits)	2.2
Sandusky County (exclusive corporate limits)	25.4
Elmore (within corporate limits)	.7
Ottawa County (exclusive corporate limits)	9.3
Wood County (exclusive corporate limits)	5.0
Toledo (within corporate limits)	9.0
Lucas County (exclusive corporate limits)	2.3

[fol. 7] List of Other Transportation Companies

Pennsylvania R. R., C. F. Lingenfelter, Room 4, Union Station, Columbus, O.

Erie R. R., F. W Fisher, Atlas Bldg., Columbus, O.

C. & O. R. R., H. Q. Wasson, 50 E. Broad St., Columbus, O.

Big Four R. R., H. N. Quigley, 230 E. Ninth St., Cincinnati, O.

Nickel Plate R. R., E. J. Holberg, Cleveland, O.

New York Central R. R., C. T. Lewis, 68 E. Gay St., Columbus, O.

Wabash R. R., Spitzer, Bldg., Toledo, O.

Cleveland Southwestern Ry. & Power Co., 1670 Union Trust Bldg., Cleveland, O.

Lake Shore Electric Co., Sandusky, O.

Railway Express Agency, 234 N. High St., Columbus, O.

Eastern Michigan Railways, Detroit, Mich.

Geo. Patton Trucking Co., 423 Livingston Ave., Akron, O.

Baier Transfer & Storage Co., 142 Griswold St., Detroit, Mich.

Red Star Transit Co., 1737 Howard St., Detroit, Mich.

Cotter Warehouses, Inc., 67 College St., Akron, O.

Harry W. Beiter Co., 147 Cleveland, Elyria, O.

Huber Motor Transportation Co., Tiffin, O.

Interstate Motor Freight Corp., 5212 Vermont Ave., Detroit, Mich.

Liberty Highway Co., 211 Licas St., Toledo, O.

Michigan Motor Freight Lines, Inc., 1035 14th Ave., Detroit, Mich.

Motor Way Freight Lines, Inc., 118 S. St. Clair St., Toledo, O.

Tri-State Express, Inc., 3000 E. 55th St., Cleveland, O.

Detroit-Cleveland Trucking Co., 3212 St. Clair Ave., Cleveland, O.

Hoosier Express Lines, Inc., 18120 Sloan Ave., Lakewood, O.

Norwalk Truck Line, Norwalk, O.

Lorain Trucking Co., Lorain, O.

Eastern Michigan Trucking Co., 14401 Third Ave., Detroit, Mich.

Detroit & Cleveland Navigation Co., 9th St. Pier, Cleveland, O.

Cleveland, Canton & Columbus Motor Frt. Co., 1500 Superior St., Cleveland, O.

Wilson & Rector, 50 E. Broad St., Columbus, O.

[File endorsement omitted.]

[fol. 8] [File endorsement omitted]

[fol. 9] Before Public Utilities Commission of Ohio

No. 5154

In the Matter of the Application of C. A. Bradley, Doing Business as Wolverine Motor Freight Lines, Flint, Michigan, for an Interstate Regular Certificate authorizing the Transportation of Property Between Cleveland, Ohio, and the Ohio-Michigan State Line Over U. S. Route 20, Final Destination Flint, Michigan

Statement of Evidence—Filed Feb. 26, 1932

Proceedings

Before Hon. T. C. Burneson, Attorney, Examiner, Wednesday, February 17th, 1932

Appearances

Messrs. G. I. Bradley and R. G. Burdett, on behalf of the applicant.

Mr. C. T. Lewis, Jr., on behalf of the New York Central Railroad Company, protestant.

Mr. R. H. Treffinger (Henderson, Burr, Randall & Porter), on behalf of the Pennsylvania Railroad Company, protestant.

Morning Session

Wednesday, February 17th, 1932.

Examiner Burneson: The first matter for hearing this morning is Case No. 5154, in the Matter of the Application of C. A. Bradley, doing business as Wolverine Motor Freight Lines, for a certificate authorizing the transporta-[fol. 10] tion of property in interstate commerce between Cleveland, Ohio, and the Ohio-Michigan State Line over U. S. Route 20.

Let us have the appearances, please.

Mr. Burdett: G. I. Bradley and R. G. Burdett, on behalf of the applicant.

Examiner Burneson: Are there any protestants?

Mr. Lewis: C. T. Lewis, Jr., on behalf of The New York Central Railroad Company.

Mr. Treffinger: R. H. Treffinger, of Henderson, Burr, Randall & Porter, on behalf of The Pennsylvania Railroad Company.

Be it remembered that on the hearing of the above-entitled cause, before the Public Utilities Commission of Ohio, the applicant, to maintain the issues on its part to be maintained, introduced and offered in testimony on its behalf, the following evidence, to-wit:

G. I. Bradley, called on behalf of the applicant, being first duly sworn, testified as follows:

Examined by Examiner Burneson:

Q. What is your full name, please?

A. George I. Bradley.

Q. What is your connection with Wolverine Motor Freight Lines?

A. I am traffic manager.

Q. Does C. A. Bradley, as an individual, operate under the trade name of Wolverine Motor Freight Lines?

A. Yes, sir.

Q. Do you expect or do you propose to transport property between Cleveland, Ohio, and the Ohio-Michigan State Line?

A. Yes, sir.

Q. In interstate or intrastate commerce?

A. Interstate commerce.

Q. Do you expect to do any intrastate business?

A. No, sir, we do not.

Q. Now over what highways do you propose to operate.

A. 20.

[fol. 11] Q. 20 from Cleveland to Toledo?

A. Yes, sir.

Q. What route north of Toledo?

A. It is the Telegraph Road.

Q. U. S. Route 25?

A. I think that is it.

Q. Now what equipment do you propose to operate?

A. We propose to operate a G. M. C. Tractor, pulling a six-ton Fruhof trailer; I think there has been some changes

made in the equipment since this application was filled out. Did you want the equipment that we will use?

Q. Yes; do you mean to say that you do not now propose to operate the equipment listed in your application?

A. Well, there is one here that has been replaced.

Q. What one has been replaced?

A. That Chevrolet.

Q. Been replaced by what?

A. An Acme.

Q. What capacity?

A. Two or 2½ tons; it is a 2½ ton.

Q. Will that Acme 2½ ton tractor pull the three-ton Fruhof trailer?

A. Yes, sir.

Q. Do you wish to amend your application to show that change of equipment?

A. Yes, sir.

Q. It may be amended. Now does C. A. Bradley own this equipment?

A. Yes, sir.

Q. Where is it being used at the present time?

A. It is being used running between Cleveland and ——

Q. Are you now operating over this route?

A. Yes, sir, we are.

Q. Are you now engaged in interstate commerce only?

A. That is it.

Q. Have you ever transported any property between points in Ohio?

A. No, we have not.

Q. Have you a financial statement of C. A. Bradley?

A. Yes, sir (producing same).

Q. Now, Mr. Bradley, will you examine what has been marked Exhibit "A" and state whether or not that is the map on which is traced your proposed route?

A. That is right.

Q. If this application is granted will you comply will all our rules and regulations?

A. Yes, sir.

Q. Is there anything that you have in mind that you wish [fol. 12] to testify further about?

A. No—I don't just understand; in regards to how we are operating, do you mean?

Q. I thought perhaps that you might have something in mind that I have not brought out?

A. No.

Cross-examination.

By Mr. Treffinger:

Q. You say you operate over U. S. Route 20 from Cleveland to Toledo?

A. That is right.

Q. What is this Wolverine transportation company, is that a corporation?

A. No, sir; individual.

Q. Is there anybody else interested in it other than Mr. Bradley?

A. No, sir.

Mr. Treffinger: I think that is all.

Mr. Lewis: I have no cross-examination.

Examiner Burneson: Mr. Burdett, do you wish to testify or has everything been covered?

Mr. Burdett: With the exception of one or two items that we would like to incorporate in our request as to service rendered.

Examiner Burneson: Will you take the stand then, please.

And also Robert G. Burdett, called on behalf of the applicant, being first duly sworn, testified as follows:

Examined by Examiner Burneson:

Q. What is your full name?

A. Robert G. Burdett.

Q. Where do you reside?

A. Cleveland, Ohio.

Q. Are you now engaged with The Wolverine Motor Freight Lines?

A. I am.

Q. In what capacity?

A. General freight agent.

[fol. 13] Q. Tell in your own words then what you wish to say?

A. Well, we feel that our transportation service Cleveland to Flint, Michigan, is the only means—the only established service between the two points that furnishes a delivery to consignees in Flint in time for working service the next morning. In other words, we feel that we furnish the only transportation service between these two points that will protect the early morning production needs of two, we might say, of the largest manufacturing concerns in the city of Flint; and in view of that we feel that it is of vital importance that this permit be granted in order to enable us to continue this service. We have operated for the past three years and the service has been efficient to the point of our being able to retain this business for that period of time. Under the present business depression and various conditions that are at the present time existing in the manufacturing field, the close buying by the manufacturers from the shippers in Cleveland, we feel that our service cannot be dispensed with without working a terrible hardship on the shippers as well as the consignees.

Q. Why is this company, if you know, now making an application for a certificate? I understand you to say that service has been given for about three years.

A. The original thought of Mr. Bradley was to operate on contract; operate on a contract basis, whereby a permit is not necessary, and in view of our anticipated increased business and the probability of spreading out and going into new fields, why, we feel that the permit will protect us as well as give us an opportunity to comply with the wishes of the P. U. C. O.

Q. How long have you been connected with this company?

A. In the neighborhood of six months now.

Examiner Burneson: I think that is all.

Cross-examination.

By Mr. Treffinger:

Q. What equipment have you been operating in the past, Mr. Burdett?

A. The equipment that has been moving over the highways and operated by us——

[fol. 14] Q. No, I mean what is the character of the equipment?

A. Semi-trailers with tractors.

Q. What capacity?

A. Well, as listed in our application.

Q. How long have you operated that equipment listed there?

A. I would not be able to tell you that; the records have not been available to me.

Mr. Treffinger: I think that is all.

Cross-examination.

By Mr. Lewis:

Q. Mr. Burdett, have you been operating up to the present time under contract?

A. Verbal, yes, with the manufacturers as mentioned.

Q. I don't know what you mean by that last answer?

A. The manufacturers, namely, the Buick Motor of the General Motors family.

Q. The two concerns in Flint?

A. No, the General Motors family, I will say.

Q. Have you been engaged as general freight agent ever since your connection with this operation?

A. In that capacity since I have been employed by the Wolverine, yes, sir.

Q. What are your duties as general freight agent?

A. Primarily to establish fair rates and freight solicitation and particularly the management of the Cleveland district.

Q. Do you solicit freight in Cleveland?

A. I do.

Q. From any one who will give it to you?

A. I do.

Q. And with each one of these parties with whom you solicit do you undertake to make a separate contract?

A. Absolutely not.

Q. Then you are not operating on contract, are you?

A. With one individual, yes, sir.

Q. You have one contract and the rest of it is not under contract?

A. We have a contract with the General Motors family which covers, I dare say—there is two members of the General Motors family that we contract with, yes.

[fol. 15] Q. And those two are in Flint?

A. Namely, the Buick Motor Company and the Chevrolet.

Q. Now the Cleveland business that you solicit, does that have anything to do with the General Motors family?

A. That is controlled by the consignee, which is the General Motors.

Mr. Lewis: I think that is all.

Examiner Burneson: I think that is all. Does the applicant have anything further to offer?

Mr. Burdett: I do not believe so.

And thereupon the applicant rested.

MOTION TO DISMISS

Mr. Lewis: The protestants desire to interpose the usual motion to dismiss on the ground of the present congested condition of Highway No. 20, as the Commission has already found.

Examiner Burneson: Do you have any motion, Mr. Treffinger?

Mr. Treffinger: I will join in that motion.

Examiner Burneson: Have you copies of those exhibits that the Commission has under consideration?

Mr. Treffinger: Yes, I have a copy right here.

Examiner Burneson: I suggest then that you offer those checks and submit them to Mr. Bradley for some examination if he desires to make any.

Mr. Treffinger: I will do that. (Presenting same to Mr. Bradley.)

Mr. Bradley: We would like to cross-examine the checker on this exhibit.

And be it further remembered that the protestants, to maintain the issues on their parts to be maintained, introduced and offered in testimony on their behalf the following evidence, to-wit:

GEORGE A. DENNIS, called on behalf of the protestants, [fol. 16] being first duly sworn, testified as follows:

Examined by Mr. Treffinger:

Q. Mr. Dennis, will you state your name?

A. George A. Dennis.

Q. By whom are you employed?

A. Pennsylvania Railroad.

Q. And in what capacity?

A. Supervising agent.

Q. How long have you been in the service of the Pennsylvania?

A. 41 years.

Q. I hand you here a pamphlet which has been marked Protestants' Exhibit No. 1 and I will ask you to state what that is?

A. This exhibit was taken on Highway No. 20 and shows the through traffic passing over that highway for a 48 hour period.

Q. During what period?

A. July 8th, 9:00 A. M. to July 10th, 9:00 A. M.

Q. Is that the same check that has been under consideration by this Commission on previous occasions?

A. Yes, sir.

Q. This is a photostatic copy of the original?

A. This is a photostatic copy of the original, yes, sir.

Mr. Treffinger: I offer it in evidence.

Examiner Burneson: It may be admitted.

And thereupon the document last above offered is admitted in evidence on behalf of the protestants and is herewith submitted and marked Protestants' Exhibit No. 1.

Cross-examination.

By Mr. Burdett:

Q. What is your name?

A. George A. Dennis.

Q. We note by the exhibit that you have listed nothing but the truck movement?

A. The truck movement, yes, sir.

Q. And in your judgment the truck movements through this point forms a congestion on the highway?

A. Yes, sir.

Q. This exhibit as evidence of congestion without the [fol. 17] check of passenger cars, do you feel that is sufficient to justify your contention that the congestion exists, only through the check of motor freight vehicles?

A. Yes, sir.

Q. Did you supervise the road check at this point?

A. I made it.

Q. At what time of the day did you notice the greatest congestion as claimed by you?

A. It is scattered along during both day and night; there were times when there were congestions in the night time and at various times during the day time.

Q. At what time of the day?

A. Scattered through from 9:00 A. M. till 9:00 A. M. the next morning; there was practically no lull at any time.

Q. At no time in the day, but what there was a congestion at that point?

A. Not particularly a congestion, but there was a continuous stream, making it necessary for two men to be on the ground making that check continuously during the 48 hour period.

Q. Would you consider a constant stream of traffic a congestion?

A. I would say it would be where it was held up, and held up other traffic, as it did in this point.

Q. Where was the point of this check; at the intersection of what route?

A. At Fremont, north of the bridge.

Q. Is there a light at that point?

A. Yes, sir.

Q. Now couldn't it be that the light would form the congestion as well as the traffic?

A. Not at that particular point; there was no traffic light at that particular point where this was taken; further on there was.

Q. The check was made east of the bridge?

A. East of the bridge.

Q. Why wasn't your check made west of the bridge at the intersection of 12 and 20?

A. For the reason that we wanted to work on that particular end which we did during the night; because the light was advantageous at that particular point where the check was made; in the day time it made no difference.

Q. Do you have a light at the intersection of 12 and 20?

A. They have a street or bridge light—two of them.

[fol. 18] Q. There is a traffic light there too, isn't there?

A. There is a traffic light east of that.

Q. There is a traffic light west of the bridge?

A. No, sir, it is east of the bridge; there may be one west of the bridge but I don't know of it.

Q. What is the width of the pavement at the point at which you took this check?

A. The width of the bridge during the dark hours and the width of the street during the daylight hours.

Q. What is the width of that pavement?

A. I would say in the daylight hours about 100 feet.

Q. 100 feet pavement?

A. Yes, sir, and the bridge I would say is probably 30 feet.

Q. At any time did this traffic move in double file?

A. Yes, sir, during the day time it did: it couldn't move in double file over the bridge at night. I never observed any.

Mr. Burdett: I believe that it all.

Examiner Burneson: Do you have anything further to offer, Mr. Burdett, or Mr. Bradley?

Mr. Burdett: We have an exhibit that we would like to offer on a road check at Fremont, Ohio, for a 48 hour period at the intersection of Route 20 and Route No. 12.

Examiner Burneson: Where is that with reference to this check, Protestants' Exhibit No. 1?

Mr. Burdett: It is just west of the bridge at Fremont, a busy crossing, at the crossing light just west of the bridge.

Examiner Burneson: The same bridge that Mr. Dennis talks about?

Mr. Burdett: His check was east of the bridge and this check was at the busiest corner in town, just west of the bridge.

And thereupon the protestants rested.

And be it further remembered that the applicant, further to maintain the issues on its part to be maintained, introduced and offered in testimony on its behalf, in rebuttal, [fol. 19] the following evidence, to-wit:

Robert G. Burdett, called on behalf of the applicant in rebuttal, having been heretofore duly sworn, testified as follows:

Examined by Examiner Burneson:

Q. Mr. Burdett, have you prepared a check showing the movement of traffic at this point near the bridge in Fremont?

A. We have; that is included in our exhibit.

Q. Now will you examine what has been marked Exhibit "B" and state whether or not that is the check which you prepared?

A. Yes, sir, this is the prepared check.

Q. All right, tell us what you found; first, did you make the check?

A. A portion of it and personally supervised the remainder.

Q. Tell us what you found.

A. In this Exhibit, in our sheets No. 1, 2 and 3, a complete check of the number of vehicles, passenger, moving east, west and south; also motor trucks moving east, west and south; electric freight cars east and west; electric passenger cars east and west; the bus movements east, west and south, passenger; estimated tonnage of loaded trucks east and the number of empty trucks east; same applying to west and south.

Sheets 1, 2 and 3 cover the movement in 30 minute periods from 6:00 P. M. on the night of February 3rd to 6:00 P. M. on the night of February 5th.

Q. What year?

A. 1932. We also submit a sample of our road checking sheet, as Sheet No. 4. Sheet No. 5 is a statement from the supervising checker, and Sheet No. 6 is a summary of the complete file.

The date chosen for this check was the first week in February, the last two days in the week, which is, without a question, the period of the month and week at which time the heaviest traffic would move over the highway.

We find by this check that there were periods, half hour periods, during the time specified that there were as few as [fol. 20] two trucks moving in either direction.

Q. Do you mean each direction or both directions?

A. Either direction, east, west and south. We find that the period of most probable congestion is from 5:00 to 5:30 P. M., and we cite on this road check the check for that period of time at which the movement of trucks was the lightest of the entire day.

The heaviest motor traffic transportation of freight is in the period from 1:00 A. M. to 4:00 A. M., at which time the passenger travel is without a question the lightest.

From personal observation on the road check there is absolutely no question as to congestion at this point.

Q. Is that in the City of Fremont or outside of it?

A. Right in the City of Fremont. And in this check is included every type of vehicle that passed the intersection, and at no time during the check was there a congested condition, and we feel that there is not a congested condition exists on this highway; and we also feel that the point at which this check was taken was a strategic point for a check as to the most probable congested district on the line between Cleveland and the Michigan State Line.

Q. What do you say about traffic lights; are there traffic lights there?

A. There is one traffic light at the point at which this check was taken, and there was no congestion, but the flow of traffic was stopped due to the change of light, and at no time was it congested or piled up to the point where there was an inconvenience to the traveling public.

Q. What is your estimate as to the width of that highway and bridge?

A. The bridge is, I think—I would not say as to the width of the bridge; I imagine it is in the neighborhood of 40 feet. Your County statistics will tell us that, of course; I cannot tell that. But the width of the highway at this point, at the point of the road check, I venture to say it is a 100 foot road at that point.

Examiner Burneson: Any questions?

[fol. 21] Cross-examination.

By Mr. Treffinger:

Q. Mr. Burdett, how much of the time were you actually present at the place where this check was made?

A. I couldn't tell you the exact time that I was present, but I supervised the check by calls and personal visitation to this checking point.

Q. Well, now, here is what I want to know; did you yourself make any part of this check, or did you have some one else make it?

A. I made the first—I think it was the first three hours of the check.

Q. That is, from six o'clock in the evening on February 3rd to nine o'clock in the evening on that same day?

A. In the neighborhood of that time, I couldn't tell you just the exact time.

Q. Now who made the check from that time on?

A. Pardon me; Mr. Bromley, Mr. Davis and Mr. Burns.

Q. And who are they?

A. Employes of our company.

Q. Where are they today?

A. They are performing their duties in their various capacities with our company.

Q. Now I want to understand this exhibit: referring to page or sheet No. 1, the column on your left shows the time of the day, does it not?

A. Yes, sir.

Q. Then the next column, reading to your right—or the next two columns, refer to passenger cars?

A. The next three columns; passenger cars east and west and south.

Q. The next three columns refer to passenger cars?

A. Yes, sir.

Q. Then the next three columns refer to trucks?

A. Yes, sir.

Q. Then you have electric cars, freight and passenger, and busses?

A. Yes, sir.

Q. So if you add across from the right of the sheet to the left of the sheet in each one of your columns you would get the total number of vehicles during what—a half hour [fol. 22] period?

A. During a half hour period, yes, sir.

Examiner Burneson: What part of that traffic was moving over U. S. Highway No. 20? I don't understand what you mean by "east, west and south"?

The Witness: That is the direction from the checking point, the direction in which the traffic moved, from the intersection of Route 12 and 20.

Examiner Burneson: Was this right at the intersection or was it on part of U. S. 20?

The Witness: Right at the intersection the check was made.

Examiner Burneson: Well, in which direction is U. S. 20?

The Witness: U. S. 20 goes east and west.

Examiner Burneson: What traffic moves south?

The Witness: That is No. 12 to Tiffin.

Examiner Burneson: Is that traffic included in this?

The Witness: Absolutely; that had to be, to prove our non-congested condition there.

By Mr. Treffinger:

Q. Now here, you take the first half hour of your check, as I read your exhibit you add a total of 73 plus 62 plus 21 plus 2 plus 6 plus 3 and 1; that is 168 cars in the first half hour, is that right?

A. According to the check.

Q. And you take during the period of 7:00 to 7:30 you have 271, is that right?

A. I haven't added it.

Q. In other words, that is the way you get your total; you have no recapitulation here showing the number of cars on an average per hour?

A. That is not necessary to show congestion.

Mr. Treffinger: I think that is all.

Examiner Burneson: That is all. Do you offer Exhibit "B"?

Mr. Burdett: I do.

Examiner Burneson: It may be admitted.

And thereupon the document last above referred to is offered and admitted in evidence on behalf of the Applicant, in rebuttal, and is herewith submitted and marked Exhibit "B."

[fol. 23] And thereupon the applicant rested in rebuttal.

And the foregoing was all of the evidence offered, introduced and admitted on behalf of the applicant and on behalf of the protestants on this hearing of this cause.

Examiner Burneson: Now if the motions are renewed they will be taken under advisement.

Motion to Dismiss

Mr. Treffinger: We renew the motion to dismiss the application. The Commission has already found that that highway is congested.

Mr. Lewis: And the applicant's own exhibit shows it.
Examiner Burneson: The ruling will be deferred.

[fol. 24] Before the Public Utilities Commission of Ohio

No. 5154

In the Matter of the Application of C. A. Bradley, Doing Business as Wolverine Motor Freight Line, for an Interstate Regular Certificate of Public Convenience and Necessity

Order Denying Application for Certificate

This day after full hearing, this matter came on for final consideration upon the application of C. A. Bradley, doing business as Wolverine Motor Freight Line, praying for a Certificate of this Commission to establish, maintain and operate a motor transportation company, carrying property as a common carrier, in interstate traffic, upon and over a regular route extending from Cleveland, Ohio, to the Ohio-Michigan State Line, over State Route #20, within the State of Ohio, the protests thereto and the testimony and exhibits offered and introduced in evidence upon such hearing.

The Commission, being fully advised in the premises, finds that said State Route No. 20, at this time, is so badly congested by established motor vehicle operations, that the addition of the applicant's proposed service would create and maintain an excessive and undue hazard to the safety and security of the traveling public, and the property upon such highway. It is, therefore,

Ordered, That in the interest of preserving the public welfare, the application be, and hereby it is, denied.

To which order of the Commission denying said application, the said C. A. Bradley, doing business as Wolverine Motor Freight Line, then excepted, here now excepts and his exceptions here are noted of record.

The Public Utilities Commission of Ohio. E. J. Hopple, Chairman; Frank Geiger, —— ——, Commissioners.

Dated at Columbus, Ohio, this 10th day of March, 1932.

[File endorsement omitted.]

[fol. 25] [File endorsement omitted]

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

No. 5154

In the Matter of the Application of C. A. BRADLEY, Doing Business as Wolverine Motor Freight Lines, for an Interstate Regular Certificate of Public Convenience and Necessity

APPLICATION OF C. A. BRADLEY, DOING BUSINESS AS WOLVERINE MOTOR FREIGHT LINES, FOR A REHEARING

23536

Now comes the applicant, C. A. Bradley, doing business as Wolverine Motor Freight Lines, and asks for a rehearing on the order of The Public Utilities Commission of Ohio, dated March 10, 1932, ordering that in the interest of preserving the public welfare, the application of this applicant be denied, for the following reasons, to wit:

1. Said application prayed for a Certificate to establish, maintain and operate a motor transportation company, carrying property as a common carrier, in interstate traffic, upon and over a regular route extending from Cleveland, Ohio, to the Ohio-Michigan State line, over State Route No. 20, within the State of Ohio. Said Application was denied solely upon the ground that State Route No. 20 is so badly congested by established motor vehicle operations that the addition of this applicant's proposed service would create and maintain an excessive and undue hazard to the safety and security of the traveling public, and to the property upon such highway. Said order of The Public Utilities Commission of Ohio, dated March 10, 1932, was unauthorized and unlawful for the reason that said Commission has no authority or power, under the laws and statutes of the State of Ohio, to deny said application of this applicant for an interstate regular certificate of public convenience and necessity upon the ground that State Route No. 20 is so badly congested by established motor vehicle operations that the addition of this applicant's proposed service would create and maintain an excessive and undue hazard to the safety and security of the traveling public, and to the property upon such highway.

[fol. 26] 2. Said application prayed for a Certificate to establish, maintain and operate a motor transportation company, carrying property as a common carrier, in interstate traffic, upon and over a regular route extending from Cleveland, Ohio, to the Ohio-Michigan State line, over State Route No. 20, within the State of Ohio. Said application was denied solely upon the ground that State Route No. 20 is so badly congested by established motor vehicle operations that the addition of this applicant's proposed service would create and maintain an excessive and undue hazard to the safety and security of the traveling public, and to the property upon such highway. Said order was unauthorized and unlawful and in contravention of the rights of this applicant under the Constitution of the United States, and especially the fourteenth amendment thereto, and constitutes an unlawful interference with interstate commerce in violation of Article I, Section 8, paragraph 3 of the Constitution of the United States.

Respectfully submitted.

C. A. Bradley, by Ellis Bradley, Doing Business as Wolverine Motor Freight Lines.

Duly sworn to by Ellis Bradley. Jurat omitted in printing.

[fol. 27] BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

No. 5154

In the Matter of the Application of C. A. BRADLEY, Doing Business as Wolverine Motor Freight Lines, for an Interstate Regular Certificate of Public Convenience and Necessity

23536

ORDER DENYING REHEARING

This day, this matter came on for further consideration upon the application of C. A. Bradley, the applicant herein, asking, for the reasons and upon the grounds set forth, a rehearing of this proceeding.

The Commission, being fully advised in the premises, finds that sufficient cause has not been made to appear in said application for a rehearing of this proceeding. It is, therefore,

Ordered, That the application of C. A. Bradley, the applicant herein, asking, for the reasons and upon the grounds set forth therein, a rehearing of this proceeding, be, and hereby the same is denied.

To which order of the Commission denying said application for a rehearing, the said C. A. Bradley then excepted, here now excepts and his exceptions here are noted of record.

The Public Utilities Commission of Ohio. E. J. Hopple, Chairman; —— ——, John W. Bricker, Commissioners.

Dated at Columbus, Ohio, this 30th day of March, 1932.

[File endorsement omitted.]

[fol. 28] [File endorsement omitted]

IN SUPREME COURT OF OHIO

No. 23536

C. A. BRADLEY, Doing Business as Wolverine Motor Freight Lines, Plaintiff in Error,

vs.

THE PUBLIC UTILITIES COMMISSION OF OHIO, Defendant in Error

Error to the Public Utilities Commission of Ohio

PETITION IN ERROR—Filed April 18, 1932

Now comes the plaintiff in error, C. A. Bradley, an individual, doing business as Wolverine Motor Freight Lines, and complaining of the defendant in error, The Public Utilities Commission of Ohio, says

That heretofore, to wit, on the 10th day of March, 1932, said The Public Utilities Commission of Ohio, in a proceed-

ing then pending before it upon an application of the plaintiff in error for a Certificate to establish, maintain and operate a motor transportation company, carrying property as a common carrier, in interstate traffic, upon and over a regular route extending from Cleveland, Ohio, to the Ohio-Michigan State Line, over State Route No. 20, within the State of Ohio, said proceeding being No. 5154 on the docket of said The Public Utilities Commission of Ohio, made a final order that in the interest of preserving the public welfare said application be denied, which order provided as follows, to wit:

"BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

No. 5154

In the Matter of the Application of C. A. BRADLEY, Doing Business as Wolverine Motor Freight Line, for an Interstate Regular Certificate of Public Convenience and Necessity

This day after full hearing, this matter came on for final consideration upon the application of C. A. Bradley, doing business as Wolverine Motor Freight Line, praying for a Certificate of this Commission to establish, maintain and operate a motor transportation company, carrying property as a common carrier, in interstate traffic, upon and over a regular route extending from Cleveland, Ohio, to the Ohio-Michigan State Line, over State Route No. 20, within the State of Ohio, the protests thereto and the testimony and exhibits offered and introduced in the evidence upon such hearing.

[fol. 29] The Commission, being fully advised in the premises, finds that said State Route #20, at this time, is so badly congested by established motor vehicle operations, that the addition of the applicant's proposed service would create and maintain an excessive and undue hazard to the safety and security of the traveling public, and to the property upon such highway. It is, therefore,

Ordered, That in the interest of preserving the public welfare the application be, and hereby it is, denied.

To which order of the Commission denying said application, the said C. A. Bradley, doing business as Wolverine

Motor Freight Line, then excepted, here now excepts and his exceptions here are noted of record.

The Public Utilities Commission of Ohio. E. J. Hopple, Chairman; Frank W. Geiger, —— ——, Commissioners.

Dated at Columbus, Ohio, this 10th day of March, 1932."

That subsequent to the entering of said final order and within thirty days thereafter the plaintiff in error duly filed his application with said The Public Utilities Commission of Ohio for a rehearing on said order of said The Public Utilities Commission of Ohio, dated March 10, 1932, which application for a rehearing specifically set forth the grounds upon which the plaintiff in error considers the said order dated March 10, 1932, to be unlawful and void; and that on March 30, 1932, said The Public Utilities Commission of Ohio made an order denying said application for a rehearing, which order provided as follows, to wit:

"Before the Public Utilities Commission of Ohio

No. 5154

In the Matter of the Application of C. A. Bradley, Doing Business as Wolverine Motor Freight Line, for an Interstate Regular Certificate of Public Convenience and Necessity

Entry

This day, this matter came on for further consideration upon the application of C. A. Bradley, the applicant herein, asking, for the reasons and upon the grounds set forth, a rehearing of this proceeding.

The Commission, being fully advised in the premises, finds that sufficient cause has not been made to appear in said application for a rehearing of this proceeding. It is, therefore,

Ordered, That the application of C. A. Bradley, the applicant herein, asking, for the reasons and upon the grounds set forth therein, a rehearing of this proceeding, be, and hereby the same is denied.

[fol. 30] To which order of the Commission denying said application for a rehearing, the said C. A. Bradley then ex-

cepted, here now excepts and his exceptions here are noted of record.

The Public Utilities Commission of Ohio. E. J. Hopple, Chairman; —— ——, John W. Bricker, Commissioners.

Dated at Columbus, Ohio, this 30th day of March, 1932."

The plaintiff in error says that said final order of said The Public Utilities Commission of Ohio, dated March 10, 1932, and said order denying the application for a rehearing thereon are unlawful, unreasonable and void, and that there is manifest error in the proceedings before said The Public Utilities Commission of Ohio and said orders entered therein in the following respects, to wit:

1. Said application of the plaintiff in error was denied solely upon the ground that State Route No. 20 is so badly congested by established motor vehicle operations that the addition of the plaintiff in error's proposed service would create and maintain an excessive and undue hazard to the safety and security of the traveling public, and to the *the* property upon such highway. Said order of The Public Utilities Commission of Ohio, dated March 10, 1932, was unauthorized and unlawful for the reason that said Commission has no authority or power, under the laws and statutes of the State of Ohio, to deny said application of the plaintiff in error for an interstate regular certificate of public convenience and necessity upon the ground that State Route No. 20 is so badly congested by established motor vehicle operations that the addition of the plaintiff in error's proposed service would create and maintain an excessive and undue hazard to the safety and security of the traveling public, and to the property upon such highway.

2. Said application of the plaintiff in error was denied solely upon the ground that State Route No. 20 is so badly congested by established motor vehicle operations that the addition of the plaintiff in error's proposed service would create and maintain an excessive and undue hazard to the safety and security of the traveling public, and to the property upon such highway. Said order was unauthorized and unlawful and in contravention of the rights of the plaintiff in error under the Constitution of the United States, and especially the fourteenth amendment thereto, and con-

stituted an unlawful interference with interstate commerce in violation of Article I, Section 8, paragraph 3 of the Constitution of the United States.

Wherefore the plaintiff in error prays that said defendant in error, The Public Utilities Commission of Ohio, may be required to transmit forthwith to the Clerk of this Court a transcript of the docket and journal entries, original papers or transcripts thereof, and a certified transcript of all evidence adduced upon the hearing before the Commission in the proceedings herein complained of, that the same may be filed in this Court, that the orders of said The Public Utilities Commission of Ohio herein complained of may be [fol. 31] reversed and vacated, that said The Public Utilities Commission of Ohio be directed to issue to the plaintiff in error a Certificate of Public Convenience and Necessity as prayed in his application, and that the plaintiff in error may be restored to all things which he has lost by reason of the orders herein complained of.

LaRue Brown, M. B. & H. H. Johnson, Attorneys for the Plaintiff in Error.

Waiver of Summons

The undersigned, The Public Utilities Commission of Ohio, the defendant in error herein, hereby waives the issuance and service of summons as provided by law, and voluntarily enters its appearance herein this 18th day of April, 1932.

The Public Utilities Commission of Ohio. By Gilbert Bettman, Attorney-General, by T. J. Herbert, Special Counsel.

[fol. 32] IN SUPREME COURT OF OHIO

No. 23536

Title

C. A. BRADLEY, Doing Business as Wolverine Motor Freight Lines, Plaintiff in Error,

vs.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Action: Error to the Public Utilities Commission of Ohio

Attorneys:

For plaintiff-in-error: LaRue Brown, Boston, Mass.; M. B. & H. H. Johnson, Cleveland, Ohio.

For defendant-in-error: Gilbert Bettman, T. J. Herbert, Columbus, Ohio.

Memoranda of Pleadings, etc., Filed, Writs Issued, Judgments, Orders, and Decrees

DOCKET AND JOURNAL ENTRIES

1932.

April 18. Petition in error (2), Waiver of Summons and Entry of Appearance filed.

" 27. 8 additional copies of petition in error filed.

May 10. Complete file from P. U. C. O. filed.

" 13. Brief of plaintiff in error (12 printed) and P. of S. filed.

June 8. Order affirmed. J. 32, p. 668.

" 15. Mandate issued.

" 25. Original papers sent to P. U. C. O.

August 31. Petition for appeal from Supreme Court of Ohio to Supreme Court of U. S., assignment of errors and prayer for reversal filed.

" " Statement as to jurisdiction filed.

" " Order allowing appeal filed.

" " Cost Bond, $500, signed by C. A. Bradley and U. S. F. & G. Co., as surety, approved by Marshall, C. J. filed.

" " Citation for defendant issued.

September 7. Citation with acknowledgment of service filed.

" " Notice under Rule XII, #2 of S. C. of U. S. and proof of service filed.

" " Precipe for transcript of record and proof of service filed.

[fol. 33] IN SUPREME COURT OF OHIO

23536

C. A. BRADLEY, d. b. a., etc.,

vs.

PUBLIC UTILITIES COMMISSION OF OHIO

Error to the Public Utilities Commission of Ohio

JUDGMENT—June 8, 1932

This cause came on to be heard upon the transcript of the Record of the Public Utilities Commission of Ohio and was argued by counsel. On consideration whereof, it is ordered and adjudged by this Court, that the order of the said Public Utilities Commission of Ohio be, and the same hereby is, affirmed for the reasons stated in the opinion filed in this case; and it appearing to the Court that there were reasonable grounds for this proceeding in error, it is ordered that no penalty be assessed herein.

It is further ordered that the defendant in error recover from the plaintiff in error its costs herein expended taxed at $——.

Ordered, That a special mandate be sent to the Public Utilities Commission of Ohio, to carry this Judgment into Execution.

J. 32, p. 668.

[fol. 34] IN SUPREME COURT OF OHIO

No. 23536

BRADLEY, d. b. a. Wolverine Motor Freight Lines,

v.

PUBLIC UTILITIES COMMISSION OF OHIO

Public Utilities Commission—Motor Transportation Companies—Routing Interstate Operation Over Less Congested Highways

Error to the Public Utilities Commission

Decided June 8, 1932

Messrs. M. B. & H. H. Johnson, Mr. La Rue Brown, Mr. John T. Scott, and Mr. Robert W. Wheeler for plaintiff in error.

Mr. Gilbert Bettman, attorney general, and Mr. Thomas J. Herbert for defendant in error.

By the COURT:

This case is but slightly different in its facts from the case of Motor Transport & Truck Co. v. Public Utilities Commission, 125 Ohio St., 374, 181 N. E., 665, this day decided. The same questions of law are presented, and upon the authorities cited and the reasons stated in that case, the order of the commission herein is affirmed.

Order affirmed.

Marshall, C. J.; Jones, Matthias, Day, Allen, Kinkade, and Stephenson, JJ., concur.

[fol. 35] No. 23434

MOTOR TRANSPORT & TRUCK CO.

v.

PUBLIC UTILITIES COMMISSION OF OHIO

Decided June 8, 1932

Public Utilities Commission—Motor transportation companies—Use of streets and highways, by common carriers, subject to regulation—Interstate operation cannot be excluded, but may be regulated—Reasonableness of regulations judged by public safety and convenience, and carriers' necessities—Routing operations over less congested highways, not impairment of constitutional rights.

1. Streets and highways belong to the public, and are primarily for the use of the public in the ordinary way. Their use for the purpose of gain by common carriers is special and extraordinary and subject to regulation by duly constituted authority.

2. The Public Utilities Commission is not authorized to exclude from the highways of the state motor transportation companies conducting interstate operations, but it may impose reasonable regulations of such traffic authorized by the laws of the state in so far as they do not constitute a direct and material

burden upon interstate commerce. Cannon Ball Transportation Co. v. Public Utilities Commission, 113 Ohio St., 565, approved and followed.

3. The reasonableness of such regulations, as applied to motor vehicles, must be judged with a proper regard to the safety and convenience of the public, in view of local conditions, on the one hand, and the necessities of those engaged in interstate transportation, upon the other.

4. Where, upon the consideration of an application of a motor transportation company to operate on a designated route carrying property in interstate commerce, it is shown that a portion of such route is so badly congested by established motor vehicle operations that the addition of the applicant's proposed service would create and maintain an excessive and undue hazard to the safety and security of the traveling public and the property upon such highway, and the commission so finds, a condition so imposed upon the applicant and subsequently applying motor companies operating in intrastate and interstate traffic that such operations be routed over a less congested highway, is not an infringement upon or impairment of any right secured by either state or federal constitution.

Error to the Public Utilities Commission

[fol. 36] Five applications were filed with the Public Utilities Commission of Ohio by the Motor Transport & Truck Company for certificates to do an interstate trucking business over various highways in the state of Ohio. Four of these permits were granted, but application No. 5083 was denied. That application was for a certificate to establish, maintain and operate a motor transportation service in interstate commerce between Cleveland, Ohio, and Dundee, Michigan, upon and over a regular route extending from Cleveland, Ohio, to the Ohio-Michigan line over state route No. 2 within the state of Ohio.

The commission upon hearing found that state route No. 2, between Sandusky, Ohio, and Cleveland, Ohio, "is so badly congested by established motor vehicle operations,

that the addition of the applicant's proposed service would create and maintain an excessive and undue hazard to the safety and security of the traveling public and to the property upon such highway," and ordered "that in the interest of preserving the public welfare, the application be, and hereby it is, denied".

Thereupon a petition in error was filed in this court to procure a reversal of the finding and order of the Public Utilities Commission.

Mr. Otto L. Hankinson for plaintiff in error.

Mr. Gilbert Bettman, attorney general; Mr. Thomas J. Herbert, and Mr. Andrew D. Rodgers, Jr., for defendant in error.

Opinion

Matthias, J.:

It is contended by counsel for plaintiff in error, (1) That the Public Utilities Commission is without authority to deny its application to operate a motortruck service in interstate commerce on the route applied for upon the ground that the highway over which it seeks to operate is so badly congested that the maintenance of the proposed [fol. 37] motortruck service by the applicant would create an excessive and undue hazard to the safety and security of the traveling public and to the property upon such highway; and (2) that if the Public Utilities Commission does have such power the record in this case does not disclose sufficient facts to warrant its finding and order and that therefore the same is unlawful and unreasonable.

The action of the Public Utilities Commission in this case was based upon the provisions of Sections 614-86 to 614-102, General Code, which confer upon such commission authority to supervise and regulate motor transportation companies and facilities, including the operations of interstate companies within the state, "in so far as the same may be permitted under the provisions of the constitution of the United States and the acts of congress." Section 614-101, General Code.

It is well settled that in the absence of national legislation especially covering the subject of interstate commerce the state may prescribe uniform regulations adapted to pro-

mote safety upon its highways and conservation of its highways; the same being applicable alike to interstate and local commerce. Hendrick v. Maryland, 235 U. S. 610, 35 S. Ct., 140, 59 L. Ed. 385; Buck v. Kuykendall, Director of Public Works, 267 U. S., 307, 45 S. Ct., 324, 69 L. Ed., 623, 38 A. L. R., 286.

It has been conceded by counsel for plaintiff in error that the Public Utilities Commission may, in the proper exercise of the police powers and for the promotion of the public safety and conservation of the highways, prescribe reasonable regulations for the use of the highways of the state, but it is contended that the action of the commission results in a discrimination against interstate commerce in that those engaged in the same business are subject to different restrictions, or are entitled to different privileges under the same conditions, and thereby the equal right which all can claim in the enforcement of the law is impaired.

The Supreme Court of the United States has in numerous [fol. 38] decisions recognized the principle that the states have a broad discretion in the exercise of their power of regulation. The case of Hendrick v. Maryland, supra, involved the question of the authority of a state to regulate vehicle transportation over its highways. In that case the court recognized the fact that the movement of motor vehicles over the highways is attended by constant and serious danger to the public, and is also abnormally destructive to the ways themselves, and held that: "In the absence of national legislation covering the subject, a State may rightfully prescribe uniform regulations necessary for public safety and order in respect to the operation upon its highways of all motor vehicles—those moving in interstate commerce as well as others." The regulation there involved was the registration of vehicles and the licensing of drivers, which the court held to be an exercise of the police power, uniformly recognized as belonging to the states and essential to the preservation of the health, comfort and safety of all their citizens, and as not constituting a direct and material burden on interstate commerce. Numerous cases supporting the decision are there cited. In the course of the opinion it was announced that: "The reasonableness of the state's action is always subject to inquiry in so far as it affects interstate commerce, and in that regard it is likewise subordinate to the will of Congress." Similarly it

was held in the case of Smith v. Cahoon, Sheriff, 283 U. S. 553, 51 S. Ct., 582, 75 L. Ed., 1264, that: "The constitutional guaranty of equal protection of the laws is interposed against discriminations that are entirely arbitrary. In determining what is within the range of discretion and what is arbitrary, regard must be had to the particular subject of the state's action." This case involved the constitutionality of a statute regulating motor vehicle operations. In the course of the opinion it was said by Chief Justice Hughes: "This is a matter of grave concern as the high- [fol. 39] ways become increasingly crowded with motor vehicles, and we entertain no doubt of the power of the state to insist upon suitable protection for the public against injuries through the operations on its highways of carriers for hire."

The Supreme Court has not determined whether interstate commerce may be excluded from certain highways and routed over others to avoid unreasonable congestion of the highways and increased hazard to the public. However, it did hold in the case of Morris v. Duby, 274 U. S., 135, 47 S. Ct., 548, 71 L. Ed., 966, that:

"In the absence of national legislation especially covering the subject of interstate commerce, the State may rightly prescribe uniform regulations adapted to promote safety upon its highways and the conservation of their use, applicable alike to vehicles moving in interstate commerce and those of its own citizens."

That case followed the case of Buck v. Kuykendall, supra, in holding that the state may not discriminate against interstate commerce. In the Kuykendall case it was said by the court, at page 315 of 267 U. S., 45 S. Ct., 324, 69 L. Ed., 623, 38 A. L. R., 286, that:

"With the increase in number and size of the vehicles used upon a highway, both the danger and the wear and tear grow. To exclude unnecessary vehicles—particularly the large ones commonly used by carriers for hire—promotes both safety and economy. State regulation of that character is valid even as applied to interstate commerce, in the absence of legislation by Congress which deals specifically with the subject."

It has been suggested that any regulation which attempts to preclude only motor vehicles operating for hire from operating over certain streets or highways is unenforceable because discriminatory, but as well said by Sutherland, J., in Packard v. Banton, 264 U. S., 140, 144, 44 S. Ct., 257, 259, 68 L. Ed., 596:

"If the State determines that the use of streets for pri- [fol. 40] vate purposes in the usual and ordinary manner shall be preferred over their use by common carriers for hire, there is nothing in the Fourteenth Amendment to prevent. The streets belong to the public and are primarily for the use of the public in the ordinary way. Their use for the purposes of gain is special and extraordinary and, generally at least, may be prohibited or conditioned as the legislature deems proper."

In dealing with this same proposition as applied to interstate commerce, in the recent case of Phillips v. Moulton, (D. C.), 54 F. (2d), 119, 121, the court, citing Buck v. Kuykendall, supra, and other cases, announced the following conclusion:

"The assertion of authority by the state is prompted by local traffic conditions and in the interests of public convenience. While neither the state nor municipal authorities could, in furtherance of such a purpose, bar the entrance and exit from the city of complainants' vehicles, nor could they impose conditions as to routes and termini so exacting as to destroy the complainants' business, they may in furtherance of such an end impose regulations which are reasonable. * * * Such regulations, though they may entail some degree of inconvenience or interference, will not be regarded as a direct and unlawful burden upon interstate commerce. The reasonableness of such regulations, as applied to motor vehicles, must be judged with a proper regard to the safety and convenience of the public, in view of local conditions on the one hand, and the necessities of those engaged in interstate transportation upon the other."

The Public Utilities Commission does not preclude operation by the plaintiff in error over our state highways, but directs operation over a route which will result in diverting the proposed increased traffic from a highway now found

to be overburdened. The record does not disclose that the order of the commission will result in the prohibition of the business of one engaged in interstate commerce, nor even [fol. 41] that it will cause substantial interference therewith. The action of the commission is not shown to have been arbitrary or unreasonable, nor does it appear from the record that the carrier may not as well operate between the desired termini over another highway which is not so congested as to have become unduly hazardous.

We cannot concur in the theory of counsel for the plaintiff in error that such action is discriminatory against interstate commerce unless the restriction be made applicable to other motor transportation companies, no matter when certified or how long in operation, and they also be rerouted over another line of travel. The record discloses that other applicants for interstate operation over said route, having been refused, have been granted such certificates covering an amended route. It is apparent that the same ruling is now intended to govern subsequent applicants, whether the proposed operation is interstate or intrastate. The view that such restrictions may be imposed finds support in the decisions of the Supreme Courts of New Jersey and Florida: People's Rapid Transit Co. v. Atlantic City, 105 N. J. Law, 286, 144 A., 630; Florida Motor Lines, Inc., v. State Railroad Commission, 101 Fla., 1018, 132 So., 851. The restriction involved in the instant case comes within the rule stated in the foregoing cases and conforms to the decision of this court in Cannon Ball Transportation Co. v. Public Utilities Commission, 113 Ohio St., 565, 149 N. E., 713. It is not an infringement upon or impairment of any right secured by either the state or Federal Constitution.

It is contended further that the facts disclosed by the record do not warrant the conclusion of the commission that state route No. 2 is so badly congested as to endanger public safety and the conservation of said highway. The record contains ample evidence covering the traffic conditions upon the highway in question to fully warrant the [fol. 42] conclusion that additional motor-truck service would create and maintain an excessive and undue hazard to the safety and security of the traveling public and to the property upon such highways.

The finding and order of the commission, being neither unlawful nor unreasonable, is affirmed.

Order affirmed.

Jones, Day, Allen, Kinkade and Stephenson, JJ., concur.

Marshall, C. J., concurs in propositions 1, 2 and 3 of the syllabus and in the judgment.

[fol. 43] Reporter's certificate to foregoing omitted in printing.

[fol. 44] IN SUPREME COURT OF OHIO

No. 23536

[Title omitted]

Petition for Appeal from the Supreme Court of Ohio to the Supreme Court of the United States, Assignment of Errors, and Prayer for Reversal.—Filed Aug. 31, 1932

PETITION FOR APPEAL

To the Honorable the Chief Justice of the Supreme Court of Ohio:

C. A. Bradley, doing business as Wolverine Motor Freight Lines, your petitioner, respectfully shows:

1. Your petitioner was the plaintiff in error in the Supreme Court of Ohio in the above entiled case.

2. Your petitioner filed an application with The Public Utilities Commission of Ohio, wherein he prayed for a certificate to establish, maintain and operate a motor transportation company, carrying property as a common carrier, in interstate traffic, upon and over a regular route extending from Cleveland, Ohio, to the Ohio-Michigan State Line, over Route No. 20, within the State of Ohio, and on the 10th day of March, 1932, said The Public Utilities Commission of Ohio made a finding that Route No. 20, at that time, was so badly congested by established motor vehicle operations [fol. 45] that the addition of your petitioner's proposed service would create and maintain an excessive and undue

hazard to the safety and security of the travelling public, and to the property upon such highway, and entered a final order that in the interest of preserving the public welfare, said application be denied. Subsequent to the entering of said final order and within thirty days thereafter, your petitioner filed with said The Public Utilities Commission of Ohio his application for a rehearing on said final order, which application for a rehearing specifically set forth the grounds upon which your petitioner considered said final order to be unlawful and void, and on March 30, 1932, said The Public Utilities Commission of Ohio made an order denying said application for a rehearing.

3. Your petitioner duly filed a petition in error in the Supreme Court of Ohio to reverse said final order of said The Public Utilities Commission of Ohio, and on June 8, 1932, the Supreme Court of Ohio, being the highest court of the State of Ohio in which a decision in said case could be had, affirmed said final order of said The Public Utilities Commission of Ohio.

4. In said case there was drawn into question the validity of a statute of the State of Ohio on the ground of its being repugnant to the Constitution of the United States, and the decision is in favor of its validity, in that the Supreme Court of Ohio held that Sections 614-84 to 614-102, inclusive, of the Ohio General Code, and especially Sections 614-86 and 614-87, which said Court construed to authorize said The Public Utilities Commission of Ohio to make said finding and said final order, based solely upon said finding, denying the application of your petitioner as aforesaid, do not violate the rights of your petitioner under the Constitution of the United States, and especially the Fourteenth Amendment thereto, and do not constitute an unlawful interference with interstate commerce in violation of Article I, Section 8, paragraph 3 of the Constitution of the United States.

Wherefore your petitioner prays for the allowance of an appeal from the Supreme Court of Ohio to the Supreme Court of the United States, in order that the decision and judgment of the Supreme Court of Ohio may be examined and reversed, and also prays that a transcript of the [fol. 46] record, proceedings and papers in this case, duly

authenticated by the Clerk of the Supreme Court of Ohio, may be sent to the Supreme Court of the United States as provided by law.

ASSIGNMENT OF ERRORS

The petitioner, C. A. Bradley, doing business as Wolverine Motor Freight Lines, assigns the following errors in the record and proceedings in the said case:

1. The Supreme Court of Ohio erred in affirming the final order of The Public Utilities Commission of Ohio, dated March 10, 1932, which ordered that, in the interest of preserving the public welfare, the application of your petitioner for a certificate to establish, maintain and operate a motor transportation company, carrying property as a common carrier, in interstate traffic, upon and over a regular route extending from Cleveland, Ohio to the Ohio-Michigan State Line, over Route No. 20 within the State of Ohio, be denied, which said final order was based solely upon a finding of said The Public Utilities Commission of Ohio that Route No. 20, at that time, was so badly congested by established motor vehicle operations that the addition of your petitioner's proposed service would create and maintain an excessive and undue hazard to the safety and security of the travelling public, and to the property upon such highway, whereas said final order violates the rights of your petitioner under the Constitution of the United States, and especially the Fourteenth Amendment thereto, and constitutes an unlawful interference with interstate commerce in violation of Article I, Section 8, paragraph 3 of the Constitution of the United States.

2. The Supreme Court of Ohio erred in holding that Sections 614-84 to 614-102, inclusive, of the Ohio General Code, and especially Sections 614-86 and 614-87, which it construed to authorize said The Public Utilities Commission of Ohio to make said finding and said final order, based solely upon said finding, denying the application of your petitioner, as aforesaid, do not violate the rights of your petitioner under the Constitution of the United States, and especially the Fourteenth Amendment thereto, and do not [fol. 47] constitute an unlawful interference with interstate commerce in violation of Article I, Section 8, paragraph 3 of the Constitution of the United States.

PRAYER FOR REVERSAL

For which errors your petitioner prays that said judgment of the Supreme Court of Ohio, dated June 8, 1932, be reversed, and that said The Public Utilities Commission of Ohio be directed to issue to your petitioner a certificate as prayed in this application.

Dated August 31, 1932.

LaRue Brown, John T. Scott, Counsel for Petitioner and Proposed Appellant. Horace P. Moulton, Robert W. Wheeler, of Counsel.

[fol. 47½] [File endorsement omitted.]

[fol. 48] IN SUPREME COURT OF OHIO

[Title omitted]

ORDER ALLOWING APPEAL—Filed Aug. 31, 1932

The appellant in the above entitled suit, having prayed for an allowance of an appeal in this cause to the Supreme Court of the United States from the judgment made and entered in the above entitled suit by the Supreme Court of Ohio on June 8, 1932, and from each and every part thereof, and having presented his petition for appeal, assignment of errors and prayer for reversal, and his statement as to jurisdiction, pursuant to the statutes and the Rules of the Supreme Court of the United States in such case made and provided:

It is here now ordered that an appeal be, and the same is hereby, allowed to the Supreme Court of the United States from the Supreme Court of Ohio in the above entitled cause, as provided by law, and it is further ordered that the Clerk of the Supreme Court of Ohio shall prepare and certify a transcript of the record, proceedings and judgment in this cause and transmit the same to the Supreme Court of the United States within forty days of this date.

[fol. 49] And it is further ordered that security for costs on appeal be fixed in the sum of five hundred dollars ($500.00).

Dated Aug. 31st, 1932.

Carrington T. Marshall, Chief Justice of the Supreme Court of Ohio.

[fol. 49½] [File endorsement omitted.]

[fol. 50] Bond on appeal for $500.00, approved August 31, 1932, omitted in printing.

[fols. 51 & 51½] Citation, in usual form, showing service on E. J. Hopple, filed September 7, 1932, omitted in printing.

[fol. 52] IN SUPREME COURT OF OHIO

[Title omitted]

PRECIPE—Filed Sept. 7, 1932

To the Clerk of the Supreme Court of Ohio:

You are hereby requested to make a transcript of record to be filed in the Supreme Court of the United States, pursuant to an appeal allowed in the above-entitled case, and to include in such transcript of record the following, and no other papers, to wit:

1. Application of C. A. Bradley, doing business as Wolverine Motor Freight Lines, for an interstate regular certificate of public convenience and necessity, including the exhibits thereto attached.

2. Transcript of Proceedings before Honorable T. C. Burneson, Attorney Examiner, on Wednesday, February 17, 1932 (omitting all exhibits thereto).

3. Order of The Public Utilities Commission of Ohio, dated March 10, 1932.

4. Application of C. A. Bradley, doing business as Wolverine Motor Freight Lines, for a rehearing.

5. Order of The Public Utilities Commission of Ohio, dated March 30, 1932.

6. Petition in error filed in the Supreme Court of Ohio [fol. 53] and waiver of summons by the defendant in error.

7. Docket entries in the Supreme Court of Ohio.

8. Journal entry affirming the order of The Public Utilities Commission of Ohio.

9. Opinion of the Supreme Court of Ohio.

10. Opinion of the Supreme Court of Ohio in Motor Transport & Truck Co. v. The Public Utilities Commission of Ohio, No. 23434 on the docket of the Supreme Court of Ohio.

11. Petition for Appeal, Assignment of Errors and Prayer for Reversal.

12. Statement as to Jurisdiction.

13. Order Allowing Appeal.

14. Bond for costs, with approval thereof.

15. Citation with proof of service thereof.

16. Notice pursuant to Rule 12, Paragraph 2 of the Rules of the Supreme Court of Ohio, with acknowledgment of service thereof.

17. This precipe with acknowledgment of service thereof.

18. Docket entries in the Public Utilities Commission of Ohio.

Said transcript is to be prepared as required by law and the Rules of the Supreme Court of Ohio and the Rules of the Supreme Court of the United States, and is to be filed in the office of the Clerk of the Supreme Court of the United States, at Washington, D. C., on or before the 10th day of October, 1932.

Dated August 31, 1932.

LaRue Brown, John T. Scott, Counsel for Appellant.
Horace P. Moulton, Robert M. Wheeler, of Counsel.

Acknowledgment of Service

Service of the foregoing precipe for transcript of record, by copy thereof, is hereby acknowledged this 31st day of August, 1932.

Gilbert Bettman, Atty. Gen. of Ohio; Thomas J. Herbert, Atty. for Public Utilities Commission of Ohio, Counsel for Appellee.

[fol. 53½] [File endorsement omitted.]

[fol. 54] Certificate of lodgment omitted in printing.

[fol. 55] Clerk's certificate to foregoing transcript omitted in printing.

[fols. 56 & 56½] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF PARTS OF THE RECORD TO BE PRINTED—Filed Sept. 24, 1932

Now comes the appellant and states that the points upon which he intends to rely in this Court are the same as those set forth in his assignment of errors, which assignment of errors is hereby adopted as his statement of points to be relied upon, and represents that the whole of the record, as filed, is necessary for the consideration of the case.

Respectfully submitted.

LaRue Brown, John T. Scott, Counsel for Appellant. Horace P. Moulton, Robert W. Wheeler, of Counsel.

Acknowledgment of Service

Service of the foregoing statement of points to be relied upon and designation of parts of the record to be printed, by copy thereof, is hereby acknowledged this 20th day of September, 1932.

Gilbert Bettman, Atty. Gen. of Ohio; Thomas J. Herbert, Atty. for Public Utilities Commission of Ohio, Counsel for Appellee.

[fol. 57] [File endorsement omitted.]

Endorsed on cover: File No. 37,092. Ohio Supreme Court. Term No. 395. C. A. Bradley, doing business as Wolverine Motor Freight Lines, appellant, vs. The Public Utilities Commission of Ohio. Filed September 24, 1932. File No. 37,092.